No. 81-5944

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

CHARLES DWIGHT MESSER,

Petitioner,

-v-

STATE OF FLORIDA,

Respondent.

_____/

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SUPREME COURT, U.S.

RESPONDENT'S APPENDIX

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SHELLEY: I have no further questions of this witness.

(witness excused)

* *

C U R T I S G O L D E N, having been first duly sworn, testified as follows, to wit:

EXAMINATION BY

MR. JOHNSON:

Q Sir, would you state your name, and spell your last name please?

A My name is Curtis Golden. My last name is spelled G-O-L-D-E-N.

Q What is your occupation, Mr. Golden?

A I'm the State Attorney for the First Judicial Circuit.

Q What is the First Judicial Circuit?

A It consists of Escambia, Santa Rosa, Okaloosa and Walton Counties.

Q What are your responsibilities as State Attorney for the First Judicial Circuit?

A My primary responsibility is to investigate criminal offenses and to prosecute all criminal cases arising in the county and circuit courts of the First Judicial Circuit.

Q Did you have that occupation back in 1973?

A I did.

Q Sir, back in November 1973 did you have the occasion to be called to the scene of an unidentified body in Escambia County, Florida?

A I did.

Q How were you notified of that body?

A Mr. Johnson, I don't recall whether I was called by telephone or whether I was called on my car radio. In any event, I was contacted by one or the other types of communication. I was in Escambia County at that time, and I proceeded directly to the scene.

Q Upon arriving at the scene what did you find?

A Well, I found that there were law enforcement officers present, and at that time I observed the body of a white male. He appeared to be in his 20's. Of course, it was obvious at the time in viewing him that he was dead.

Q Where was his body located?

A It was located approximately five miles south of I-10, and it was south of the Stuckey's interchange on I-10, and it was a few yards off of, I believe it's S-191.

Q Is that in Santa Rosa County, sir?

A It is in Santa Rosa County, yes.

Q Sir, after finding that body did you have the occasion to investigate the death of that person?

A I did, yes.

Q How did you proceed in your investigation?

A The Santa Rosa County Sheriff's Office asked me to participate with them in the investigation of the case, and I worked primarily with Lt. Cobb, and he and I first collaborated with Officer Boswell in viewing the crime scene, and we reviewed with him also whatever evidence he had obtained at the crime scene. Then Lt. Cobb and I began a routine investigation of the murder. This involved the location and the questioning of any suspects. I know at one time we checked all the pay telephones along the interstate thinking that possibly the person who had committed the crime was hitchhiking, and after the automobile had been parked they had to leave the scene by some way, so we thought they may have called someone to come after them. We obtained the toll records of all the telephone calls from the pay telephones along the interstate. We checked all the calls out; we talked to people who had made the calls; we talked to people that received the calls. In addition to that we ran down other leads which we had. We had some confidential information on suspects, and we investigated these suspects. This continued over a period of several months. I believe it was two or three months.

Q How many hours did you spend on the investigation with

the other officers up to this point in time?

A Mr. Johnson, all told there were thousands of hours -- man hours -- devoted to this investigation by the Santa Rosa County Sheriff's Department as well as my office.

Q Sir, in mid-January 1974, did you have occasion to receive some information about an individual who might have some information about this murder?

A I did.

Q How did you receive this information, sir?

A This information came to me from the Santa Rosa County Sheriff's Office. It came to them from the Florida Department of Criminal Law Enforcement, and it came to them from the Alabama State Police.

Q Sir, upon receiving this information, how did you proceed with the investigation?

A Lt. Cobb and myself and Agent Cornelius with the Florida Department of Criminal Law Enforcement drove to Anniston, Alabama. The information we had was that a subject was in custody in Alabama who had information relating to the murder. We proceeded to Anniston. Upon arrival we were briefed by the sheriff and by Capt. Davis of the Alabama State Police, as well as Wayne Mannis, an F.B.I. agent. After being briefed on the situation by them we then interviewed the Defendant Charles Wesser.

Q Do you recall when you conducted this initial interview with Mr. Messer?

A Yes, sir. I believe it was on January 17, 1974, and it was somewhere in the afternoon somewhere around 4:00 to 4:12 P.M.

Q And where was this interview conducted, sir?

A It was conducted at the Sheriff's Office in Anniston, Alabama.

Q Who was present during this interview?

A There was myself, Lt. Cobb, Capt. Davis, Officer Perry Cantrell with the Anniston City Police Department, and Agent Wayne Mannis with the F.B.I. Also, Agent Ronnie Cornelius with the Florida Department of Criminal Law Enforcement.

Q Mr. Golden, what was the first thing you advised the defendant when you had your interview with him?

A The first thing I did was to advise him of his constitutional rights. But I might state, prior to that time, Mr. Johnson, that the defendant informed me at that time -- when I first arrived and entered the room -- that he had knowledge of a murder which occurred on the interstate somewhere in Florida, and he told me that while he did not participate in the murder, that he was present when it was committed, and he asked me to grant him immunity in return for his telling me

about it, and I informed him at that time that I could not do that because I did not know what he was going to tell me, and I did not know at that time whether or not he was involved. He thought for a few minutes and said, "Well, I'll go ahead and tell you about it anyway." At this point I advised him of his constitutional rights.

Q Did he ever advise you during this time, sir, why he was relaying this information to you?

A No, sir.

Q I show you State's Exhibit Number One and ask you if you can identify that?

A Yes, this is a true and correct copy of the constitutional rights form which I read to Mr. Messer at the time of interview. It contains a waiver of his right to a lawyer. This statement was signed by him in my presence, and it was witnessed by Agent Cornelius and by Lt. Cobb at that time.

Q Would you explain to the ladies and gentlemen of the jury what these rights are?

A Yes, sir. Would you like for me to read the form, or would you rather that I merely state to them what the rights are?

Q Did you read the form to him, or did you orally advise him of his rights from memory?

A I orally advised him from memory, and I also read his rights to him.

Q Would you advised the jury what you advised him? I don't care if you read it or state it from memory.

A I advised him that he had a right to remain silent, he did not have to answer any questions, anything he said could be used against him as evidence in court, that he had the right to have an attorney present while being questioned, that if he could not afford an attorney that he could have one without cost before answering any questions. I advised him that if he wished to answer questions without a lawyer at that time that he had a right to do so, and that he also had the right to stop answering questions at any time that he decided to do so. I advised him that if he waived his right to a lawyer at that time, that he would still have a right to have a lawyer appointed at no cost to him to represent him and to defend him at any court proceedings that may be had after that.

Q Sir, after advising him of his constitutional rights didn't you, in fact, interview the defendant?

A Yes, sir I interviewed him, but I first determined what his education had been in order that I could determine that he understood his rights, and at that time I asked him what his education had been, and he told me that

he had finished two years of junior college.

Q Sir, this interview that you conducted of the defendant, was this a recorded interview?

A It was recorded, yes.

Q Mr. Golden, I have some tapes here that have been marked as State's Exhibits Number 28 and 31. Is this an interview -- or a recording of the initial interview with the defendant?

A Yes, these are tapes of that particular interview.

JOHNSON: At this time we would like the jury to hear these tapes.

JUDGE: Okay. Any objection?

SHELLEY: All of them?

JUDGE: All of them?

JOHNSON: Yes, sir.

SHELLEY: It is going to take about six hours to hear all the tapes.

JUDGE: What is the purpose of hearing them all?

JOHNSON: The purpose is the jury is going to find all the inconsistent statements the defendant did make.

SHELLEY: I have no objection to playing the tapes in full, with 25 minutes to the side. It seems to me that if we could do the hearing

of the tapes all at one time at another time it would be better so we can complete the examination, but I have no objection to playing them, but it will take something near seven hours to hear all the tapes. The defendant, incidentally, has stated that most if not all of the statements in those tapes were fabrications and not true.

JUDGE: Let's start with the last tape you took.

JOHNSON: In view of that, may Mr. Golden testify to the substance of what this first interview was?

JUDGE: Right, and then lets go to the last tape and let me weigh that a little bit before we make that decision.

BY MR. JOHNSON:

Q Mr. Golden, what was the substance of the first interview with the defendant Messer?

A Basically Mr. Messer stated that he and another individual by the name of Ronnie Brown from Bonifay, Florida, were in the company of a person by the name of Ray King who worked for Ford Motor Company in Bonifay, Florida, and that while they were in his company that he was the one who killed the decedent Henry Fowler. He gave two conflicting statements.

In one statement he claimed that the three of them were together, and they were returning from Mobile, and they visited the South Seas bar in Pensacola, and while they were there Ray King saw Fowler and they became associated there, and King told them that he was going over to show Fowler some property that Fowler wanted to buy, and he stated that they went over to Santa Rosa County and drove over there, and that Ray King and Fowler got out of the car and went back to the back of the car, and King was motioning with his arm this way, and then suddenly he pulled a pistol out and shot Fowler. He stated that King took a substantial amount of money off of Fowler, and that he gave Bonnie Brown $500 of it. This was in one statement. Another statement was basically the same. Of course, he also related that they went on to Crestview and there they picked up Fowler's automobile, and that they drove it back to the rest area where it was left.

We went back the next day and talked to Mr. Messer again, and we explained to him that there were inconsistencies in what he said and what the true facts were. One of those inconsistencies was the time element involved. We knew approximately what time Mr. Fowler left Mobile, Alabama, and he would not have had time to have driven his automobile to Crestview, and caught a

ride back to the South Seas Bar in Pensacola by the time that Mr. Messer said they met him there.

Another inconsistency was the clothing of Mr. Fowler which was such that we felt it would be difficult for him to put the amount of money which Mr. Messer said he had on him in his front pants pocket because he had no belt, and no socks, his shirt was open in the front, and we felt it was difficult for him to have that much money in his pocket without it showing. So, then he changed his story somewhat, and in his second story he said that the automobile was parked in Pensacola. And, of course, he also maintained that they met Fowler at the South Seas Bar -- I believe that's correct, Mr. Johnson.

Q Did he go into detail about how this murder occurred, Mr. Golden?

A In both instances he claimed that Ray King was the one who committed the murder.

Q Did he also indicate in that first statement how Ray King laughed after the murder had occurred?

A Yes, sir.

Q And did he go into such detail as to how Mr. King had placed a file into the end of the pistol after he had shot the man?

A Yes.

Q Did he give any reason why the man took the file and put it in the end of the pistol?

A Yes, sir, he said so that later it could not be determined that the bullet that killed Fowler was the one that was fired from that gun. He said it would mess up the rifling in the pistol. He also said that on one occasion that the motive was robbery, and on another occasion he said that the motive was because Fowler had been involved in drugs with King, and King wanted to kill him because of some of their dealings that they had had in drugs.

Q Did he also indicate during this interview that he had met Fowler before also?

A He indicated, I believe, that he had seen Fowler on one occasion in Bonifay prior to that, yes, sir. He had seen him at a truck stop.

Q He indicated the sum of money that was taken initially was about $8,000, is that correct?

A I believe that's correct, yes, sir.

Q Sir, during this initial interview of January 17th did you have the occasion to show the defendant some photographs?

A I did, yes, sir.

Q I have here State's Exhibit 17, 18 and 19 -- 10, 11, 12, 13 and 14. I ask you to look at those photographs

and ask you to identify them if you can.

A Yes, sir, these photographs were shown to Mr. Messer at the time of my initial interview of him. He identified these photographs. He identified the photographs as being the automobile of the person who was murdered while he was present. He also identified the photographs of the individual shown in them as being the person who was murdered at that particular time. He was asked at that time to initial these photographs, and also to date them, which he did.

Q The initial on each of these photographs of "C.M., January 17, 1974", is that of Charles Messer?

A That is correct, yes, sir.

Q Mr. Golden, how did the second statement differ from the first statement that Messer gave you?

A Mr. Johnson, If I recall correctly, the primary difference was merely in locations as far as where they first met Fowler on that occasion, and the motive for the killing. Mr. Messer continued to maintain that Fowler was killed by Ray King of Bonifay.

Q Did he not also indicate during these first two interviews that after the man was shot that Brown and King drug the body off in the woods?

A Yes, sir.

Q Was there any evidence at the scene that there had been

any scuffle or the body had been drug through the woods in any manner?

A There was absolutely no evidence whatsoever which would indicate that the body had been dragged or that he had been killed any place other than the location where the body was found.

Q After conducting the second interview with the defendant did he agree to return to Florida to assist you in the investigation?

A He did. Yes, sir.

Q How did this agreement take place that he would return to Florida to assist you in the investigation?

A I asked him if he would be willing to do that, and he stated that he would, and he signed an agreement -- in fact, I executed an agreement with the Alabama authorities -- and Mr. Wesser also agreed whereby Mr. Wesser was to be transported to Santa Rosa County, Florida, for the purpose of pointing out to us the location where the murder occurred and where the boy was first abducted and where the automobile was found. Based on this agreement Mr. Wesser was subsequent to that time transported to Florida by Sheriff Roy Snead, City Police Officer Perry Cantrell, and Capt. Bubba Davis of the Alabama State Police Department.

Q Mr. Golden, you mentioned an agreement that was signed

by you, and one signed by Defendant Messer. I show you State's Exhibit Number 3 and 4. Would you identify those for the jury.

A Yes, sir. State's Exhibit Number Three is the agreement which Charles Dwight Messer signed on January 18, 1974, in Anniston, Alabama, agreeing to accompany the Alabama authorities to Florida for the purpose of pointing out the location of the crime, and he also agreed to return to the State of Alabama with the Alabama authorities after he had been to the location.

State's Exhibit Number Four is an agreement which I signed on January 18, 1974, at Anniston, Alabama, whereby I agreed that if the Alabama authorities would transport Mr. Messer to Florida, that I would waive all jurisdiction over him and would agree that he be voluntarily returned to the State of Alabama immediately after he had pointed out the locations of the crime.

Q Was the defendant ever promised anything for coming to Florida to assist you in the investigation?

A No, sir. He was made no promises of any kind.

Q Would it be a fair statement that you never offered him any type of mercy for assisting you in the investigation?

A Absolutely no type whatsoever.

Q Were you also present during the time that he was returned to Florida?

A I was present when he arrived at the Santa Rosa County Sheriff's Office. It was on the morning of January 23, 1975.

Q What was the purpose of being here at that time?

A The purpose in being here at that time was to point out to the local authorities the location of the murder, the location where the victim was abducted, the location where the automobile was abandoned.

Q And didn't he, in fact, point out some of the places for you?

A Yes, sir. We left the Santa Rosa County Jail; we proceeded directly to the scene of the murder; we arrived there; Mr. Messer got out of the automobile; he walked down the road; he was first a little unsure about the location of the road, but once we arrived and got there and we walked down the road he said, "This is it", and he pointed to the tree where the body was found -- by which the body was found -- and said, "That looks like the tree where it occurred."

There was a couch -- when I visited the scene on the first day I observed an old couch which had been abandoned -- had been thrown by the road there -- by a mud puddle. He looked at the couch, and

he said, "I remember that couch, but it was not in this location. It was farther down." I too observed that the couch had been moved. It appeared as though someone had gotten in a bog, and had taken the couch and torn it apart, and moved it down the road, and used it to assist them in getting out of the bog.

Q Mr. Golden, do you remember the manner in which he identified the place where Henry Fowler was shot -- how he described that incident?

A How he described the place?

Q Yes.

A When he described it in Alabama or in Florida?

Q When he was at the scene. Do you remember in what type -- at this point in time was he still identifying Ray King as the perpetrator of the murder, is that correct?

A That's correct.

Q Do you recall him making some comment about where the boy was shot -- do you remember the language the defendant used?

A At all times -- virtually all times -- and particularly at that particular time he was using language or referring to him as a "son-of-a-bitch this", or a "son-of-a-bitch that", "The son-of-a-bitch shot him right here", is what he said.

JOHNSON: At this point in time I will tender the witness.

EXAMINATION BY

MR. SHELLEY:

Q Mr. Golden, did Charles Messer ask for any immunity or special treatment subsequent to his first statement?

A No, sir, he did not.

Q Did you take Brown into custody, or were you able to take Brown into custody after you learned his name in the first interview?

A We returned to Florida, and Agent Cornelius with the Florida Department of Criminal Law Enforcement drove to Bonifay for the purpose of locating Bonnie Brown. He determined in Bonifay from relatives of Brown that he was at that time in Texas. He called Brown in Texas and talked with him. We did not want him to know that we wanted to talk to him about this particular case because we were afraid he may not return to Florida, so Agent Cornelius told him that this department was investigating damage to certain county equipment in that particular county -- which was true -- they were conducting such an investigation -- but it was not true that we wanted to talk to him about that particular investigation. Brown agreed at that time to fly to Fort

Walton Beach, Florida, for the purpose of discussing that particular investigation with the Florida Department of Criminal Law Enforcement. Agent Cornelius made arrangements for the flight for him. He bought the tickets, and he gave him his flight schedule over the telephone. Mr. Brown flew in to Fort Walton Beach per the agreement, and he arrived in Fort Walton Beach somewhere around 11:00, I believe, and then he arrived at the office of the Florida Department of Criminal Law Enforcement in Fort Walton somewhere around 9:00, and the Florida Department of Criminal Law Enforcement began its questioning of him.

I was present when he arrived. I believe those who questioned Mr. Brown were Agent Cornelius and Lt. Cobb with the Santa Rosa County Sheriff's Office.

I was present at the time of his arrival. I was not present in the room with him at the time of the initial interview of him.

Q Was he confronted with Mr. Messer's statement of what had occurred in Florida?

A Mr. Shelley, you will have to ask Mr. Cornelius and Mr. Cobb about what he was confronted with at the time. I was not present in the room at the time.

Q Before I do that, Mr. Golden, I will ask you if you have

that knowledge.

A I was not present in the room at the time.

Q Still, I ask you the question do you have knowledge about...

A I don't know what he was confronted with at that particular time.

Q As of January 15th did you have anyone in custody who you later learned had anything to do with what happened on Garcon Point?

A On January 15th?

Q Yes.

A No, sir, not on January 15th.

Q Did you have the name of anyone connected with what was happening out there?

A No, sir.

Q Did Mr. Brown make a statement?

A Mr. Brown -- after Lt. Cobb and Agent Cornelius had talked with Mr. Brown he made a recorded statement. This was on January -- it was on the night of January 21st and on the morning of January 22nd. After he had completed his statement, which was recorded, he was placed under arrest and he was transported to Santa Rosa County Jail by Lt. Cobb and I. This was in the early morning hours of January 22, 1975.

SHELLEY: I have no further questions.

JUDGE: Anything further?

JOHNSON: Not at this time.

(witness excused)

* *

RECESS (5:00 p.m.)

(Jury permitted to go to their homes and cautioned not to discuss the case or to listen to T.V. or radio accounts of the case, nor to read any newspaper articles in this regard.)

RECONVENE (9:00 a.m., May 25, 1976)

SHELLEY: (To the Court) Your Honor, your local radio station this morning stated that Mr. Golden had made a statement to the effect that he was confident this jury would return a death verdict, so if you would specifically ask that of the jury members, I would appreciate it.

(Thirteen year old Rick Garrett was introduced to the court. He, according to Mr. Shelley, would be observing the trial and assisting in the mechanics of playing recorded statements for the jury.)

JURY SEATED IN BOX

JUDGE: Ladies and gentlemen of the jury, let me ask you a question, and would you answer it outloud. Are each of you here with the same factual knowledge you had when you left here yesterday afternoon?

(No denials)

JUDGE: Have any of you read any accounts of this trial in the newspaper, or heard any accounts of it on the radio or watched it on television since yesterday afternoon?

(Negative)

JUDGE: No one has tried to contact you about this case?

(Negative)

JUDGE: Do you gentlemen require any further examination?

JOHNSON: The State does not, YOur Honor.

SHELLEY: No further questions.

* *

C U R T I S G O L D E N, having been recalled to the stand, testified as follows, to wit:

EXAMINATION BY

MR. JOHNSON:

Q Sir, you are the same Curtis Golden who testified yesterday, is that correct?

A I am. Yes, sir.

Q Mr. Golden, I believe you testified on January 17th you were present in Anniston, Alabama, to interview Defendant Charles Dwight Messer, is that correct?

A That is correct, yes, sir.

Q And approximately what time of day was this, sir?
A The interview was approximately 4:12 in the afternoon. In that area.
Q At this time did the defendant relate to you why he was relaying this information to you, sir?
A He did make a statement to me at that time that he wanted to get it off his conscience.
Q And this is the same time he indicated he was a witness to a murder, is that correct?
A That is correct, yes, sir.
Q Do you have a tape recording of that initial interview in Anniston, Alabama?
A I do. Yes.
Q This is a recording of the initial interview with Messer, is that correct?
A That is correct, yes.
Q At this point in time who was present during this interview?
A There was myself, Lt. Jesse Cobb with the Santa Rosa County Sheriff's Office, Perry Cantrell, a city policeman with the City of Anniston, Alabama; Capt. Davis with the Alabama State Highway Patrol; and I believe, Sheriff Roy Snead, sheriff of Anniston, Alabama.
Q And this was after you advised him of his constitutional rights ennumerated on State's Exhibit Number One?

A That is correct. He was advised of these rights by me orally; this entire rights form was read to him by me; and he affirmatively waived his rights to an attorney at that particular time, signed the rights form -- it was signed in my presence. It was witnessed by Mr. Ronnie Cornelius who was also present at that time, and Lt. Cobb.

JOHNSON: May we play the tape at this time, Your Honor?

JUDGE: Go ahead.

(Tape played for the jury)

Q Mr. Golden, the defendant indicated during his statement that he was, in fact, drunk. Was he drunk during this time?

A He was not drunk when I had my conversation with him. He did have a hangover, and he was somewhat nervous, but he was not drunk at that time. He had been incarcerated since sometime the day before, and this was in the afternoon of the day when I talked with him. He knew where he was at, he knew who I was, he knew what was happening to him, and he seemed to be very rational, and it was obvious in talking with him that his mind -- he had his presence of mind and even remembered the couch that was at the location where the killing occurred. He remembered the trees in the other areas. He

remembered the person who was killed -- the victim.

SHELLEY: Mr. Golden, all this amounts to argument from the witness stand, which we spoke to the court about yesterday. We have listened to the tape, and I don't think this is appropriate...

JOHNSON: Certainly he can describe the man's physical condition.

SHELLEY: He wasn't doing that, Your Honor.

JUDGE: Restrict your testimony to describing the man's physical condition.

A He appeared to be very lucid and appeared to be sober at the time

Q Mr. Golden, did you have occasion to have a later conversation with him in Anniston, Alabama?

A I did, yes.

Q When was this done?

A This was the next day. It was around noon -- maybe 12:00 - 12:15.

Q What was the purpose of having the second interview?

A After the statement was given to us on the 17th, we had a conference and we reviewed it, and we determined that there was a discrepancy between some of the facts which he had stated in his statement, and facts which we had determined to be true in our investigation. One

of those was the fact that he stated the body had been dragged after the victim had been killed. We found no evidence of that at the scene. He stated that the victim had $8,000 on him. We had determined in our investigation that he had only $120 on him. In addition to that, he stated that the money was in 20 dollar bills, and in examining the clothes it was obvious to us that he could not have had $8,000 in 20 dollar bills on him without it being open to the public to see because the pockets of his pants were rather shallow, and the shirt was open. He had no pockets in his shirt. Then, in addition to that, the time elements did not match up. He stated that it was somewhere around noon, 11:30 or 12:00, when they went to the South Seas Bar and encountered the person he referred to as Mike. Our investigation -- and also he stated that his automobile was in Crestview. Our investigation disclosed that the victim left Semmes, Alabama, sometime around noon or a little before then, and then it would have been impossible for him to have driven to Crestview and left his automobile and ridden back to Pensacola or driven back to Pensacola in another automobile and have been there by that time of day which Mr. Wesser said they encountered him.

Q During this interview did he ever make a statement about the Defendant Ronnie Brown?

A Yes, he did. In our conversation with him the first day he told us that he could verify what he was telling us by Brown, who he said was present at the time of the killing, but he told us that he would have to talk to Brown first privately in order to get Brown to talk to us -- that otherwise he would not talk to us and he would not tell us about it.

Q He also mentioned during this statement about the criminal involvement of Brown. Did you have the occasion to investigate the criminal background of Brown?

A Yes, sir, we did.

Q Did he have in his background any criminal record?

A No, sir. He had no criminal record whatsoever.

Q Sir, this second interview which you had with the defendant, was that also recorded?

A It was. Yes, sir.

Q Who was present during this interview?

A Well, what happened was the next day we returned to the jail and we met Mr. Mannis -- Wayne Mannis -- the F.B.I. agent who was there at that time. He is the person to whom Mr. Messer first indicated that he was a witness to the killing in Florida, and it was indicated at that time by Mr. Mannis that Mr. Messer had been a confidential informant for him -- a paid informant. So, I returned to the jail and met with Mr. Mannis

there. I informed Mr. Mannis that there were discrepancies in what Mr. Messer had told us and what we had determined to be the true facts. So, he then talked with Mr. Messer outside of our presence. This was before we saw Messer that morning. He came back and told me that Mr. Messer wanted to tell me the truth -- he wanted to clarify his statement -- tell me the truth. So, there was myself, and Mr. Mannis, and Mr. Cornelius, and Lt. Cobb. We all entered the room where Mr. Messer was at, and he began his statement, and then he told Mr. Mannis that he did not want to give a statement that day in the presence of anyone except me. I asked Mr. Mannis if he would stay as a witness because Mr. Messer apparently had confidence in him. Then I asked Mr. Cornelius and Mr. Cobb if they would leave the room. After they left the room Mr. Messer began giving his statement.

Q How long is that statement, sir?

A That statement is approximately 20 minutes.

Q Do you have a recording of that statement?

A Yes, I do. It is much shorter than the first one was.

SHELLEY: I understand that statement is in evidence?

JOHNSON: It had already been admitted into evidence.

(Tape of January 18, 1974, played for the jury)

GOLDEN: If I could clarify one thing I stated earlier -- Mr. Cornelius and Mr. Cobb left the room at the beginning of this statement. In between the change of the statements they came back into the room and they were present during the recording of the last five minutes of the statement.

Q You also mentioned advising the defendant of his rights. I show you State's Exhibit Number Two. Is that the rights form?

A Yes, sir. This is the constitutional rights form which was at that time shown to him, and it is identically the same as the one which he had read the day before, and he signed this form in my presence immediately before giving the last statement which was played here.

Q After taking this last interview of him did you have the occasion to discuss with him his coming to Florida?

A Yes, I did.

Q What was the purpose of that?

A The purpose of it was for him to come to Florida to point out to local law enforcement agencies the location where the murder occurred and the location where the automobile was left.

Q I have here State's Exhibits Number Three and Four...

A State's Exhibit Number Three is an agreement signed by the defendant...

SHELLEY: Excuse me, Mr. Johnson. We did all of this yesterday afternoon. These things are in evidence. They were introduced into evidence yesterday afternoon, they were read to the jury, and now we are doing it again.

JUDGE: Is that the same...

JOHNSON: Yes, Your Honor, but we are trying to get a continual approach to the problem.

Q This is the same paper that you identified yesterday, Mr. Golden?

A It is, and it is an agreement whereby he agreed to come to Florida for that purpose and to return to the State of Alabama with the Alabama authorities.

Q And did he, in fact, subsequently return to Florida?

A He did. Yes, sir. And State's Exhibit Number Four, of course, is the agreement which I had with the State of Alabama that he would be returned if he came to Florida.

Q Did you continue with this investigation until the time the defendant was charged with first degree murder and robbery, sir?

A I did. Yes, sir.

JOHNSON: That's all I have.

EXAMINATION BY

MR. SHELLEY:

Q Were you able to ascertain, from the statements and the investigation that you indicated were on-going, whether or not Ronnie Brown left the automobile at the scene?

A Mr. Shelley, all I can do is refer to the statement of Mr. Messer -- the last statement of Mr. Messer -- and also the two statements by Ronnie Brown. Ronnie Brown gave two statements, and in the first statement he indicated he did not leave the car, and in the second statement he indicated he did. Mr. Messer in his last statement, and, of course, in all others, and in his last statement indicated that Mr. Brown left the automobile.

Q When Mr. Messer -- Charles Messer -- agreed to come back to Florida -- why I ask, Mr. Golden, is so much of today was repetitious of what we did yesterday and...

JOHNSON: I object, Your Honor.

SHELLEY: Well, I have indicated to him I am not trying to ask the same questions yesterday.

Q I believe you indicated that these statements that Charles Messer had given were,confronted Brown when he

came in from Texas, did I understand that to be your testimony?

A No, sir, I did not give that answer yesterday. I told you yesterday that I was not present in the room when the initial interrogation of Brown began, and consequently I had no personal knowledge of whether he was or was not confronted with it. Now, my investigation -- if you would like my understanding from my investigation -- my understanding from my investigation is that Mr. Brown was not confronted with it because we did not want Mr. Brown to know what Mr. Messer had told us because if what he had told us was not true we did not want Mr. Brown to be able to give him corroboration on that point.

Q You mentioned that a number of conversations took place off the record. I believe the first tape -- there was the reference there by one law enforcement officer that this was not the discussion they had had the day before?

A Just to clarify that, the person that made that statement was Wayne Mannis, the F.B.I. agent. He was referring to the conversation which he had with Mr. Messer the day before we arrived, and it was from this conversation that we determined that Mr. Messer was a witness to a murder in Florida.

Q Let me get it clear in my mind. Before you went up to

Anniston you had no suspect. When you came back you had Mr. Messer who had indicated he had identified the scene, and he had identified the car, and he had identified the body, he had given the name of Ronnie Brown, and he had agreed to come to Florida, and you also had Ronnie Brown in custody?

A That is correct, and he also tried to send an innocent man to the electric chair.

Q Was there any chance of this innocent man -- innocent of this crime -- of going to the chair based on what Mr. Messer told you?

A If he had been believed, and if his testimony had accorded with the facts and had been believed, and the jury had believed it, he could have, yes. Very well.

Q Well, would you have checked out his statement? Did you check out his statement?

A Yes, sir, and because we did do that and did not accept it, we were able to determine that he was innocent. But, if we had accepted the statement of Mr. Messer it was his intent that this man go to the electric chair -- or he be convicted of first degree murder.

Q You say that was his intent. Do you know what his intent was?

A Apparently it was, Mr. Shelley.

Q Well, are you taking into account, when you give that

opinion, sir, his request for some negotiation before he made any statement? I believe he several times asked you for that?

A That is correct, sir.

Q And on every occasion, even after he would give you additional information and additional information and additional information, you never at any time made any promise?

A No, sir. The only time we discussed that was at the very beginning when he asked for immunity and I refused to give it to him, and, of course, after that he never mentioned it again.

Q I believe he made a final statement in which he said he would be willing to take a lie detector test on anything he was saying in that statement. Were you present at that statement?

A I was not present.

Q Did you have access to it?

A Yes.

Q Did you check out that statement?

A Mr. Shelley, we performed a full investigation of this case, and we compared all the facts to that statement, yes, sir -- the facts which we had at hand.

Q You indicated Mr. Brown had no prior record. I believe on all the statements -- I just don't know how many --

there were numerous instances of where both Brown and Messer described criminal activity ranging from robbery to burglary -- there were several robberies, several burglaries -- that were thwarted by one event or another that made the particular offense impossible, or that they couldn't do it. When you testify he has no prior record you are telling us that he had no record for which he had been arrested and taken to court for? You weren't indicating...

A Let me clarify that if I may, please.

Q Please.

A We determined that Mr. Brown had no record prior to meeting Mr. Messer. We determined that he had no record of an arrest or a conviction before or after meeting Messer. On the basis of the statement of Mr. Messer as well as Mr. Brown, apparently they had been on the course of criminal activity for some time prior to the time that this killing occurred. But, I emphasize again that we found no evidence of any criminal activity on the part of Mr. Brown before he met Mr. Messer.

Q Now, the statement that Mr. Messer gave about his education, did you check that out?

A No, sir. We accepted that as being correct.

Q Is it generally true that anything that seemed to hurt

him you accepted, and anything that seemed to help him you rejected?

A Not necessarily, Mr. Shelley. The reason that I did not go further with his education is that that was not really germane to the issues involved. It was not important except for his ability to understand his rights when they were given to him and to understand what he was telling them. It was obvious to me in talking to the man that he was very intelligent, he was very lucid at that time, and he knew exactly what was happening, so I saw no need to go any farther with an investigation of his education. And, in addition to that, I had no reason to believe he had any motive for lying to me about his education.

SHELLEY: I have no further questions.

EXAMINATION BY

MR. JOHNSON:

Q Mr. Golden, Mr. Shelley mentioned a lie detector or polygraph examination. Would you tell the ladies and gentlemen of the jury if these are admissible in evidence?

A Mr. Johnson, they are not admissible in evidence, and they are not admissible because they have never been proven to be scientifically correct and reliable.

Q And that is the reason you did not consider...

A That is the reason, and the reason I have never relied upon those in my investigations.

Q During the course of your investigation did you have the occasion to learn how co-defendant Brown met the defendant Messer?

A Yes, sir, it is my understanding that they met while Mr. Messer was incarcerated in jail in Bonifay, Florida.

Q Do you know how it came about that Brown met Messer there, sir?

A It is my understanding that Mr. Brown's brother-in-law was a juvenile counselor in Bonifay, and it was through the visits of Mr. Brown to the jail while Mr. Messer was in jail that he met him.

Q During the course of your investigation, sir, did you have the occasion to learn who was apparently the leader in this criminal activity?

A Yes, sir. In talking with Mr. Messer and talking with Mr. Brown in investigating this matter it became obvious to me that Mr. Messer was the more intelligent of the two. Mr. Brown had an eighth to tenth grade education. He was of rather low intelligence. He seemed to be the type of person who was a follower. Mr. Messer on the other hand was a leader, and it appeared that at all times that the defendant Mr.

Messer was the one who was the dominant influence in the relationship.between the two.

SHELLEY: Excuse me, Mr. Johnson. At this time I renew my motion that was raised yesterday in regard to arguing before the court. If the court will rule, rather than taking the jury out of the jury box...

JUDGE: Denied.

Q Mr. Golden, did any of these reasons have bearing on the reason you accepted a plea to second degree murder by the co-defendant Brown?

A Yes -- those and other reasons.

Q What were those other reasons?

A Well, as I stated before, Mr. Brown had no previous record of criminal activity prior to the time he met Mr. Messer. This particular reason -- and also, it was actually through Mr. Brown's cooperation and his statement that we were able to solve this case and arrive at the truth. It is true that Mr. Messer first mentioned the fact he was a witness, and it was through his statement to Mr. Mannis that we were able to determine that he and Mr. Brown were suspects in the case, but it was not through his cooperation that we solved the case: it was through the cooperation of Mr. Brown. Mr. Brown was very remorseful about it. He cried quite a bit in

the interview at the time that he told us about it, and he was quite cooperative. And it was for these reasons that I felt that these mitigating circumstances outweighed or neutralized the aggravating circumstances in the case. And, under the law, if a person is convicted of first degree murder and the jury recommends mercy, and the judge accepts that, then the penalty is life imprisonment. Under the law the maximum penalty for second degree murder is life imprisonment. So, I felt that rather than to -- I felt that the mitigating circumstances neutralized the aggravating circumstances in his particular instance. And, I felt for that reason that the jury in all probability would recommend mercy, and the judge would probably grant that, and I felt that there was no reason to put the State of Florida to the expense of trying him if he would plead guilty to second degree murder and his maximum penalty could be the same as under first degree. So, I accepted the plea to second degree murder with the opinion that he would in all probability receive life imprisonment.

Q Was there any negotiation between the State of Florida and Defendant Brown as to what sentence he would receive?

A There was absolutely no negotiations whatsoever. The only negotiation was that the State of Florida would

allow him to plead guilty to second degree murder, and it would be left to the court to determine what the sentence would be, and I was of the opinion at that time that it would in all probability be life imprisonment.

Q But, in fact, he received a lesser sentence, is that correct?

A That is correct. He received 30 years in prison, but this was not due to any negotiation on the part of the State of Florida.

Q He entered a plea with no recommendation from the State of Florida, is that correct?

A That is absolutely correct.

Q And that was Judge Wade that sentenced that defendant instead of Judge Wells, is that right?

A I believe that's correct.

Q You mentioned remorse on the part of Defendant Brown. Is there any remorse on the part of the Defendant Messer?

A Absolutely not -- not one note of remorse in his voice as he told about it.

Q Would you describe it as maybe an attitude of contempt for the deceased?

SHELLEY: Your Honor, the objection will be renewed throughout, rather than interrupt you

in testimony. It is impossible to rebut this type of evidence. There is no way we can cross.

JOHNSON: Your Honor, according to the statute it is not limited to the strict rules of evidence in normal proceedings.

SHELLEY: I'm not asking for strict rules of evidence. I'm just asking for an opportunity -- let me understand your ruling?

JUDGE: The court has ruled that it will allow questioning regarding the physical characteristics demonstrated by Defendant Messer and the Defendant Brown, but it is going a little far when you get into the area of the law when it is the prerogative of the court to do that.

With that in mind, you may proceed.

BY MR. JOHNSON:

Q Was there any particular reason, Mr. Golden, why you didn't negotiate a plea to second degree murder with Defendant Messer?

A Yes, sir, there was.

Q What was that?

A Well, for one thing there were four aggravating circumstances detailed by the statute present. It was a

heinous and cruel...

SHELLEY: Your Honor, at this time we would renew the objection...

JUDGE: That objection will be sustained.

SHELLEY: Thank you.

Q You started renumerating, sir -- there were aggravating circumstances in your opinion, is that correct?

A That is correct. Yes, sir.

Q Itwas for this reason that no ...

SHELLEY: Your Honor, he is continuing to do the same thing. The court just sustained my objection.

JUDGE: I will let him express his opinion that they were aggravating circumstances, but the jury will draw their own conclusions as to whether or not they were aggravating circumstances and what they were.

A Mr. Johnson, I found no mitigating circumstances.

Q And it is for this reason he was prosecuted for the crimes he was charged with?

A That is correct.

JOHNSON: Thank you. That is all.

JUDGE: Mr. Golden, was it part of your agreement with Brown that he testify against co-defendant Messer?

A No, sir, it was not.

JUDGE: Mr. Shelley, do you have any more questions?

SHELLEY: Oh, yes, sir, I have a considerable number of questions.

EXAMINATION BY

MR. SHELLEY:

Q Mr. Golden, did you have ample evidence to believe that you could establish before a jury for their determination that Mr. Brown was guilty of first degree murder?

A Yes, sir.

Q What is the difference between the life sentence that a jury may give a defendant convicted of first degree murder, as opposed to a possible life sentence given a person in second degree?

A The only difference, Mr. Shelley, is the period of time in which they are eligible for parole.

Q With that only difference could you state -- clear it up for us.

A Yes, sir. Under the statute a person convicted of first degree murder and sentenced to life imprisonment cannot be paroled in less than 25 years. A person convicted of second degree murder and sentenced to life imprisonment may be paroled in less than that period of time.

Q As a matter of fact, Mr. Brown will be eligible for parole in June, is that not true?

A Well, I wouldn't say "eligible". He's qualified for parole, but not necessarily eligible. Under the law the parole department must review the file of each inmate every six months, and consequently they must review his file within six months after he is incarcerated. In accordance with their policy, and if they find that he is eligible, then they can parole him if he's qualified under the law to be paroled, but this doesn't mean that he's eligible under the parole regulations and provisions.

Q But the point is that there is no requirement under the law that Mr. Brown serve a day longer than the Florida Probation and Parole determines is necessary?

A According to their rules and regulations, yes, sir.

Q Whereas, in the case of first degree murder convictions the Florida Parole and Probation Department could all be unanimously in favor of a parole say after 21 years, but he must serve an additional four years before he would be considered for parole?

A That is correct. He must serve at least 25 years before he can be considered.

Q Mr. Golden, I would like to make reference to page 7 of a transcript of Mr. Brown's second statement at the bottom of that page, and play that portion of the tape. If you would like to follow with me -- Mr. Golden, I

wonder if you might listen to this.

(At this time a portion of a tape was played. This court reporter was not provided with a copy of the transcript, and the tape was at times inaudible)

Q Mr. Golden, did you ever personally, or by one of the law enforcement agents question Brown in the following areas: "Mr. Brown, the tools that you have indicated earlier in this statement that were handed to you by Mr. Messer and that you put in the back of the car -- what happened to those tools?"

A I'm sorry, Mr. Shelley, I didn't understand you.

Q Did you ask Mr. Brown whether or not he had a wrench or any other tool, and did he hit Mr. Fowler as he walked -- as he indicated in the statement -- that he walked with Mr. Messer -- and Mr. Fowler -- out by the tree, and they walked out there by the tree, and he was present at what he calls the "commotion". Did you ever at any time or through any one of your agents ask Mr. Brown what he did?

A Mr. Shelley, I personally did not ask Mr. Brown. I was not present during the taking of this conversation or of the previous conversation, and I was not present at all conversations by the other officers with Mr. Brown, and consequently I don't know what was asked of

him other than what I've heard played on the tapes.

Q Did you have access to the tapes -- did you listen to them in this investigation that you were conducting?

A I have read transcripts of these two tapes.

Q Well, yes, sir. The transcripts were typed up. Did you read the transcripts?

A I read the transcripts of the two tapes, yes, sir.

Q Did you see in there anywhere that anybody asked Ronnie Brown what he did as he walked with Mr. Messer and Mr. Fowler out to that tree? Did he have anything in his hand? Specific question, "Did he have anything in his hand?" Did he ask that question?

A Sir, I don't recall. You have the tapes. You can play them.

Q We are going to play them, Mr. Golden, but I'm asking you, because you have testified as to what was in all these other tapes and your reasonings on it. I didn't ask -- what I'm asking now -- did you or anybody under your direction ask Mr. Brown, to your knowledge, did he have anything in his hands as he walked out to that tree?

A Mr. Shelley, I was present at the taping of the other two -- the two of Mr. Messer -- and, of course, I recall those. I was not present at the taping of these two. I personally never asked Mr. Brown that question.

Q Do you know anybody who did? You've read the transcripts, I take it?

A I've read the transcripts, but I don't recall whether or not that question was in there.

Q Whether he struck Mr. Fowler -- whether Mr. Brown struck Mr. Fowler -- was that question asked to your knowledge?

A I don't recall.

Q I believe in that statement a little bit earlier -- I believe at 158 on the calibration -- where he describes the shooting...

JOHNSON: Is this tape in evidence?

SHELLEY: It was copied by a specialist in the clerk's office from the tapes that were in evidence.

JOHNSON: Then I think you need to mark it.

SHELLEY: We will mark this tape and introduce it into evidence. But, in the meantime, if there is any question about the reference -- the record that I have here is the reference to the tapes that I used.

Q Mr. Golden, I wonder if you might listen to Brown's final version of what happened as far as the shooting when the gun went off.

A Are you going to play the entire tape now?

(Tape played)

Q Mr. Golden, as I understand his description he is indicating he is there. Were any questions asked pertaining to that situation -- specifically, did he have anything in his hands?

A Mr. Shelley, here again, I was not present during the conversations that were taped, and I was not present during their preliminary conversations with him. I don't recall. I can tell you this, though -- from reading the transcripts of these tapes I formed the opinion and impression...

SHELLEY: I'm going to object...

A ... the indication was that Mr. Messer had...

Q Mr. Golden, I have made an objection, and you are acquainted with the rules -- that the judge has to rule on my objection. If we can conduct it that way, I would appreciate it.

A Certainly, sir.

JUDGE: Don't express an opinion at this point. Just respond to his question to the best of your ability.

Q Mr. Golden, were you present when Mr. Cornelius lied to Mr. Brown out in Texas that you indicated to us yesterday -- to get him to come back to Florida?

A I was not present when Mr. Cornelius had his conversation with Mr. Brown.

of the law and the evidence. Mr. Fleming can argue his own motion -- it is his motion -- but I want it clearly understood that we are not suggesting that Mr. Golden failed to execute a duty required of him by law, or broke a statute, or committed any offense against the laws of the State of Florida.

FLEMING: That was my point, Your Honor, and I do not suggest misconduct on Mr. Golden's part as elected State Attorney and as the prosecuting attorney. Prosecutors do have discretion ...

JUDGE: How does the discretion which he exercised in one defendant's case mitigate in favor of the other defendant? That's what I'm asking you.

FLEMING: Your Honor, we have shown circumstances here, and the evidence has shown by Mr. Golden's own testimony that these two defendants participated in the same...

JUDGE: I recognize and accept the fact -- accepting that argumentum -- but take now that he has exercised that discretion against one that is equally guilty with the other -- and assume for the sake of argument that they are equally guilty. How does that mitigate in favor of your defendant? That is what I'm asking you.

FLEMING: Your Honor, it makes Mr. Wesser no less guilty of the offense, but what it does do is to point

out the arbitrariness with which the death penalty can be applied in this nation of ours -- such arbitrariness that the Supreme Court of the United States has criticized the decision of Furman vs. Georgia in which this present statute in Section 921 of the Florida Statutes attempted to alleviate by setting forth specific aggravating and mitigating circumstances by which those ennumerated circumstances alone determined which penalty a person was to receive. We have expanded beyond those ennumerated circumstances, Your Honor, and entered into others which the legislature had not permitted, thereby showing, Your Honor, that there are indeed...

JUDGE: Mr. Fleming, you are arguing the same thing that has been argued before the Florida Supreme Court as the basis for declaring the statute unconstitutional. The court has ruled that it is constitutional, and your purpose in being here today is for the jury to hear the mitigating and aggravating circumstances. I am going to deny your motion.

(The jury, which had been removed from the courtroom during the argument on this motion, was returned to the jury box.)

EXAMINATION OF MR. GOLDEN

BY MR. SHELLEY (continued)

Q Mr. Golden, as Mr. Kanpp testified in the trial yesterday and indicated he had occasion to look in Mr. Fowler's trunk and there to view several tools that were in the trunk, and he drew a picture of one of them as being the type or variety of tool. That tool he indicated, I believe, was "yeah" long, and then it was described as from 18 inches to two feet long.

A This was whose testimony?

Q Mr. Knapp. He was a friend of Mr. Fowler's.

A Yes, sir.

Q Did you ask -- or do you know anyone who did ask Mr. Knapp about that type of tool or the type of tool that might have been used to produce a blow such as was found in the back of Mr. Fowler's head?

A Mr. Shelley, I recall talking with a member of the family of Mr. Fowler -- I believe it was his father-in-law -- who described the tools that were in the luggage compartment of the car. He stated there were tools there, and he described those tools. I believe he had mentioned that they had some kind of letters on them -- a-p-c, or something like that.

Q Mr. Golden, did you ever consult with the pathologist in this case relative to his opinion after viewing the

Q Did you know he was going to do that?

A I was under the understanding that he was, yes, sir.

Q As a matter of fact, without you being present with many law enforcement officers whom you direct and guide in the enforcement of the law -- you are not physically present, but they report to you as to what is going on, and you make the benefit of their investigation in your determinations, is that correct?

A During these investigations they do make some reports, but it is not a situation where they are required to report to me on all of their activities on everything they do, and they do not make a verbatim report of everything that is said or everything that happens. They do brief me occasionally on what the situation is from time to time.

Q Well, as I understood your testimony you spent -- and the law enforcement officers -- literally thousands of man hours...

A All agencies involved, yes, sir.

Q And you produced absolutely no suspects that were later connected with the case, and yet you took an hour and 10 minutes, and then a 20 minute statement from Mr. Messer, and you came to the conclusions and reasons that you described to the jury, based on that investigation. Let me ask you this -- when you were making

those reasons and those determinations about Mr. Messer of which you had personal knowledge, did you take into account his last statement that Mr. Messer made?

A I don't follow your question. When I came to those...

Q Were you present at this statement -- the last statement?

A The last statement that was given?

Q Yes.

A No, sir. I was not present.

Q Well, you made your determinations based on statements in which you knew he was lying? You were firmly convinced of that -- that he was not telling you the truth?

A My determinations at what point, Mr. Shelley?

Q Determinations of what plea should be entered as regard to Brown.

A I see. In making that determination I took into consideration all of the statements that had been given by Mr. Brown as well as Mr. Messer.

Q Did you take into account his explanation of what occurred to the extent of confronting Mr. Brown with Mr. Messer's statement?

A At the time that this determination was made, Mr. Shelley, all parties had attorneys, and it was not a situation where I could go back to Mr. Brown and talk

to him in regard to this.

Q When Mr. Brown had a private attorney -- the Askew law firm -- Levin, Levin, Askew and Warfield?

JOHNSON: Objection. Objection.

SHELLEY: I'm just trying to ask him -- is that not true.

A He was represented by Mr. Rod Magie.

JUDGE: Objection is overruled.

Q Of that firm?

A Yes, sir.

Q And I believe at all times Mr. Messer had no counsel until the public defender was appointed?

A Well, actually, Mr. Brown was advised by the Public Defender's Office prior to the time that he retained -- his family retained Mr. Magie.

Q I believe less than 30 hours in Fort Walton?

A No, sir, it was here in Santa Rosa County. He was advised by Mr. Peter Mitchell who was with your office at that time, Mr. Shelley.

Q After he had made his statements.

A It was after he had made one statement but before he made the last statement.

Q Are you telling me that before Mr. Brown made the second statement he had an attorney, Mr. Peter Mitchell?

A Yes, sir. Mr. Peter Mitchell met with him and talked to

him.

Q And he made the statement after that?

A That is correct, yes, sir.

Q Did Mr. Messer receive any promises for his final statement?

A No, sir, absolutely no promises at all.

Q Did you, or anybody that you know of in law enforcement, specifically confront Mr. Brown with Mr. Messer's version of the incidents that occurred?

A Mr. Shelley, I never confronted him with it.

Q Do you know anybody who did?

A All I know is the transcripts which I have read, and on those transcripts it appears that he was not confronted with it.

Q Were your investigations ever able to demonstrate the occupations or the vocations of Mr. Brown and Mr. Messer -- other than crime?

A I don't recall the occupation of Mr. Brown. I know that the information was available to me, and I had that knowledge at one time, but I don't recall today what his occupation was, but I do recall that his education was either eighth or tenth grade education. I do recall that he was of low intelligence. In fact, I recall the testimony of the psychologist who stated that he was extremely poor in the assimilation of words

and in the understanding of words and their uses, and he stated that he was a poor student in school.

Q Mr. Golden, I asked him about that too, and about his intelligence. He did succeed in being present at the commission of first degree murder in this county, and had the opportunity and occasion to be sentenced to the natural life imprisonment, and never be asked whether he participated in it. Did you work that into your formula for intelligence?

A No, sir, I disagree that he has never been asked if he participated in it. I think he gave two statements indicating that he did participate, and was a very material part of not only the abduction and robbery, but the murder.

Q Mr. Golden, was it not your impression that Mr. Brown never actually was present during the commission of this crime?

A No, sir, not that he was never present. I think he was present at the scene at the time of the crime. It was my impression, and my understanding, and my conclusion that Mr. Messer is the one who actually committed the murder. He's the one who pulled the trigger that caused the man's death.

Q Do you recall your deposition being taken last Wednesday?

A Yes, sir.

Q In your office?

A Yes, sir.

Q By me?

A Yes, sir.

Q Do you recall on page 19 -- "I came to the conclusion that Ronnie Brown had no actual participation in the killing itself. I came to the conclusion that Charles Messer struck Fowler in the back of the head with a pistol and then he shot him." Do you remember that statement?

A Yes, sir, that's correct.

Q If I understood the factual situation taken by either of Mr. Brown's statements -- that he was in the company of Mr. Messer when they stopped at a rest stop and commandeered Mr. Fowler's car at gunpoint with a gun that was purchased by Mr. Brown and financed by him?

A With Mr. Messer being present at the time.

Q A gun that Mr. Messer couldn't get.

A Because he is a convicted felon, yes.

Q Because he is a convicted felon. Mr. Brown got him that gun?

A Right.

Q Then Mr. Brown drove the automobile away from the rest stop?

A That's correct.

Q And drove it to a remote area?

A That's correct.

Q And although he first indicated that he never got out of the car because he was too drunk -- in the second statement he did indicate that he was with them up until the point he was shot, and what he refers to as the "commotion"?

A That's correct.

Q And you have testified that based on that it was ample evidence to convince you that he could be convicted of first degree murder?

A That's correct.

Q And you came to the conclusion that he had no actual participation?

A I came to the conclusion that Mr. Wesser is the one that actually killed the man.

Q Well, I appreciate that, and I'm sure Mr. Johnson will let you testify to other things, but I asked the question that you came to the conclusion that Ronnie Brown had no actual participation in the killing?

A I came to the conclusion, Mr. Shelley, that Ronnie Brown participated in the abduction, participated in the robbery, and that he was present at the time of the actual killing -- which made him guilty of first

degree murder, the same as Mr. Messer who is the one who actually pulled the trigger and killed the man.

Q Mr. Golden, did you make any comments to the local radio station, WKCC I believe is the station?

A No, sir.

Q So if they quote you on that radio, that never occurred?

A I made no statements to any news media yesterday, Mr. Shelley.

Q Radio -- WKCC.

A Any news media -- radio, television or newspaper. If they quoted me, then it is incorrect.

Q What did Mr. Brown give you?

A Pardon?

Q What did Mr. Brown give you by way of evidence?

A What did he give us?

Q Yes.

A Well, you have his first statement, Mr. Shelley, in which he...

Q But we're in the area of your opinion about it, Mr. Golden -- not facts for this jury to reach their conclusion, and my question leads to your opinion which they must consider.

A Well, he was the first one to admit that the abduction and the killing was actually perpetrated by he and Mr.

Messer.

RECESS

* *

FLEMING: The defendant at this time would move to discharge the jury and move the court to impose a sentence of life imprisonment upon the defendant here today on the ground that the prosecuting attorney in this case has impermissibly exercised arbitrary discretion by permitting the accomplice Ronnie Brown, against whom the prosecuting attorney had ample evidence of first degree murder, to plead to a lesser offense. The Legislature of the State of Florida, Your Honor, has determined that a person guilty of first degree murder is guilty of a capital offense and must mandatorily receive a minimum of 25 years in prison upon a life sentence, and possibly the death penalty. If there are not sufficient aggravating circumstances to outweigh the mitigating circumstances, then, of course, the lesser punishment of the minimum 25 years in prison must be imposed. But, instead, the prosecuting attorney has impermissibly, inconsistently with the evidence permitted the co-defendant or the accomplice Ronnie Brown to plead to a lesser offense despite the evidence, thereby clearly violating the mandate of the Legislature of the State of

Florida.

The statute which purports to set forth very stringent standards for determining whether a person is guilty of a capital offense of first degree murder should receive a death penalty or should receive a life sentence as opposed to the death penalty. Nowhere in those criteria does it give the prosecuting attorney authority to lessen the degree of guilt.

JUDGE: Mr. Fleming, let me ask you a question. Assuming for the sake of argument that Mr. Golden abrogated his responsibility or was guilty of some misconduct or violation of the statutes in accepting the plea from Brown, how does that affect Mr. Messer?

SHELLEY: Your Honor, I would like to make it very clear at this point that there has been no indication from my office -- the Office of Public Defender, First Judicial Circuit -- that Mr. Golden has ever done any violation of statute or failure to exercise his responsibility of the law.

JUDGE: I thought that was what he was arguing?

SHELLEY: No, sir. As I understand his argument, he has exercised a discretion so that two individuals that should have been in the first degree range of penalty -- he has used his discretion arbitrarily to let one out of that circle -- not giving equal protection

the internal portion of the wound -- what might produce a blow like that?

A I read his written report -- his autopsy report.

Q Did you ask him specifically whether or not there was any possibility or probability of the gun that you came in possession of as having caused the blow to the back of Mr. Fowler's head?

A Mr. Shelley, if I recall correctly his report indicated that the blow was caused either from -- I believe he stated a sharp instrument -- if I could have a copy of that report...

Q Specifically my question is did you ever call on the telephone, or do you know anyone who did, or saw Dr. Birdwell in person, and ask for hisopinion as to the type of instrument that would produce that kind of a blow?

A Mr. Shelley, his report indicated the type of instrument he thought could have produced it. As you know and I know, after having been in many of these cases, he could not say exactly what type instrument -- whether it was one particular instrument or another. All he could do is give a general description of the type which he feels that it could have been, and in his report he stated that it most likely was made by a somewhat sharpened instrument or possibly a rounded

blunt instrument -- one of the two. And, in my opinion, this could fit a gun -- yes, sir -- a gun barrel.

Q You indicated in your testimony "as you and I both know". I wish you would leave me out of that opinion. Now, you reviewed the autopsy report that is dated what date?

A It is dated November 27, 1973.

Q That is when he did the autopsy?

A That is correct, yes, sir.

Q Do you know when it was received by your office?

A I do not.

Q Specifically, did you personally consult with Dr. Birdwell relative to the wound in the back of Fowler's head?

A I did not talk with Dr. Birdwell personally. I used his report.

SHELLEY: Thank you very much.

JUDGE: Any re-direct?

EXAMINATION BY

MR. JOHNSON:

Q Mr. Golden, have you had the occasion to see lacerations on people's heads?

A Yes, sir.

Q On how many occasions?

A I couldn't estimate, Mr. Johnson -- it's been so many

times. I've been prosecuting now for 15 years, and during that time I have seen a lot of them.

Q And is this how you came to the opinion that it is possible that the pistol caused this blow?

A That is correct. Yes, sir.

Q Mr. Shelley referred to a blow on the back of the head. Was there any evidence that this blow was caused by Ronnie Brown, other than the statement that Defendant Messer made?

A We were unable to find any physical evidence whatsoever to indicate that it was from a tool or tire tool caused by Ronnie Brown, other than the last statement of Mr. Messer.

JOHNSON: That's all I have.

EXAMINATION BY

MR. SHELLEY: I don't want to belabor the point, but that is in light of the fact that you didn't do anything affirmatively yourself or direct any law enforcement agents to check out that last statement. Did you go back to the scene at Garcon Point, or anything of this sort?

A Mr. Shelley, the scene was covered in very minute detail at the time of the investigation of the crime.

Q Specifically, my question was after you received

Mr. Messer's last statement and Mr. Brown's last statement, nothing was done affirmatively towards the investigation of what Mr. Messer had said -- what Mr. Brown said?

A It is my understanding that there was some contact with the police agency in Texas where Mr. Brown's Ranchero was located, from the standpoint of determining if there was any tools or anything in the car at that time -- and the tape deck also. I doknow that Mr. Davis went to Mr. Messer's house and talked to his wife about some evidence. I'm not sure what evidence was included.

Q Mr. Golden, there was one other matter -- it's a minor thing -- could you tell us specifics of this consultation with Mr. Peter Mitchell and Mr. Brown?

A It is my understanding...

Q Could I interrupt? It is my understanding -- we can find no indication that Mr. Mitchell conferred with Mr. Brown before he made his second statement. That's what I'm asking you.

A If you have listened to Mr. Brown's statement, he states in there that he has a lawyer and his lawyer is a public defender, Mr. Shelley. It is my understanding that Mr. Brown was placed in a line-up on that particular day, and that prior to being placed in the line-up that he

did talk with Mr. Peter Mitchell, and possibly after the line-up.

Q What I am asking is do you have any personal knowledge...

A I have no personal knowledge of it. I was not present at the time. This is merely my understanding from what I have been told.

SHELLEY: Thank you, Mr. Golden.

Your Honor, I have no further questions.

JOHNSON: The State has nothing further.

JUDGE: You may step down.

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RECESS

FLEMING: Dr. Anthony Semon, a clinical psychologist, will be a witness the defense will call at this time at the graciousness of the state attorney, Mr. Johnson, because Mr. Semon needs to be in Pennsylvania in a few short hours. We are going to put his testimony on now at this time, and the doctors have requested that Mr. Messer not be present during the testimony of both of the witnesses.

JUDGE: Mr. Messer, you understand that you have a right to be present and face any witness that appears to testify in this case? You are aware of that right?

DEFENDANT: Yes, sir, I am.